

**Before the  
FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 74 of the Commission's  
Rules to Permit Satellite Feeds to  
Noncommercial Educational FM Translators  
Operating on Commercial Frequencies

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RM - 10609

To: The Commission

**REPLY TO OPPOSITION COMMENTS  
OF  
REC NETWORKS**

Comes now Calvary Chapel of Twin Falls, Inc. ("Calvary"), Creative Educational Media Corporation, Inc. ("Creative"), Positive Alternative Radio, Inc. ("PAR"), and Priority Radio, Inc. ("Priority") (hereinafter sometimes collectively referred to as "Petitioners"), pursuant to § 1.45 of the Commission's Rules, and respectfully submit this reply to the opposition comments submitted in this rule making proceeding on December 4, 2002 by REC Networks ("REC").<sup>1</sup>

At the outset, REC complains that certain organizations have "abused" the FCC Rules by creating a large FM Translator network throughout the United States, REC also argues that FM Translators were intended for "unserved and underserved" areas, and not certain urban locations that have been awarded FM Translator licenses. In conclusion, REC argues that the FCC should give licensing preference

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<sup>1</sup> Please be advised that the address of the undersigned counsel for the Petitioners has changed since the original Petition for Rule Making was submitted. Counsel's new address is: 7900 Wisconsin Avenue; Suite 304, Bethesda, MD 20814-3628.

to LPFM stations and that FM Translators should resort to microwave delivery as compared to satellite delivery.

A careful reading of REC's opposition comments not only reveals REC's strong bias against the FM Translator Service but also demonstrates REC's total lack of understanding regarding the fundamental nature of the FM Translator Service as well as a short-sighted understanding of the technologies that support these broadcasting services.

To begin with, REC argues that Calvary has abused the FCC Rules which permit NCE-FM translators to operate in the reserved band by being fed through alternative means such as microwave and satellite. REC states that Calvary is the licensee or the applicant of over 11% of all FM Translators in the United States. Nevertheless, REC has not supplied one scintilla of evidence to support its claim that Calvary has "abused" the process. Although an occasional Calvary application has had unexpected technical problems, all of Calvary's applications have been properly applied for. Calvary has played by the rules, and it has obtained all its FM Translator permits and licenses through lawful means in accord with prevailing FCC precedent. To hint otherwise is a gross mischaracterization of the truth.

REC has also mischaracterized the meaning of "unserved and underserved." Just because a certain geographic area has an abundance of radio stations, it does not mean that all programming niches are being represented there. As the Commission's own records attest to, the FM Translator Service was instituted in 1970 as a means to supplement the primary service provided by full facility FM stations:

We believe that, to the extent a translator station provides a service to the public which it would not otherwise receive, the public benefits .... See, *Report and Order in Docket No. 17159, 20 RR 2d 1538(1970) at para. 4.*

FM Translator licensees such as Calvary, PAR, Creative, and Priority provide primarily religious oriented programming, and they do so in such a way that the commercial and collegiate broadcasters fail to do. In many major radio markets religious broadcasters do not have the financial wherewithal to purchase a full power AM or FM radio station. That being the case, Calvary (and others) should not be disparaged by their attempt to reach the major broadcast markets via the use of FM Translator Stations./\*

Thus, the fact that REC complains that Calvary operates FM Translator Stations in markets such as Phoenix, Des Moines and Charleston simply proves that REC totally misses the mark as to the purpose, significance and importance of the role of FM Translator Stations in ensuring that the public interest of all segments of society are being served./<sup>3</sup>

REC also misses the point with regard to the impact of TV Channel 6 on the FM radio service. There are large portions of the country where NCE-FM translators are precluded from the reserved band by the protection requirements of TV Channel 6. In these areas, it would be necessary to procure a non-reserved band channel for any FM translator, regardless of whether or not the area was already well served by full power NCE-FM facilities. In fact, many of these areas are actually underserved as a result of the preclusionary impact of these TV Channel 6 protection requirements.

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<sup>2</sup> When the Commission created the FM Translator Service in 1970, it was clearly decided that "[b]ecause we recognize that community-sponsored FM translators will be requested only where there is a real public demand, we will impose no restriction on the location of the areas they will **serve**. *Id.*, 20 RR 2d 1538(1970) at para. 6.

<sup>3</sup> While REC raised the issue of FM Translator Service to major radio markets, the Commission should take notice of the fact that out of Calvary's approximately 340 FM Translator Stations, only 17 are listed by REC as being located in densely populated areas -- which equates to five percent (5.0%) of Calvary's facilities.

REC also takes the position that the Petitioners should signal feed their FM Translators via microwave. However, the use of microwave links creates a technical strain in many regions of the country. Although the use of microwave links looks viable in theory, the fact is that any further use of terrestrial communications links often brings with it tower siting and zoning issues, and fierce competition for affordable tower space amongst competing communications services.

The use of satellite links is often more cost effective than the use of terrestrial links, and it avoids the many issues related to an already over-crowded auxiliary broadcast spectrum. For example, VSAT satellite links are now much more affordable than many terrestrial STL links. And, since FM Translator Stations are only afforded 30-seconds per hour in which to originate underwriting announcements for fund raising, every step must be taken to keep the FM Translator Service as cost effective as possible.

Finally, REC argues that certain FM Translator Stations should be treated as having a sub-secondary license status to LPFM applicants, whereby an LPFM applicant could bump an FM Translator licensee off-air if no other channels are available for LPFM use. In this regard, REC is seeking to expand the nature of this rule making proceeding to revise the Commission's LPFM rules. This is not the proper forum for that matter. Nonetheless, REC seems to disregard the fact that LPFM applications, permits and licenses have priority status over subsequently proposed FM Translator facilities as FM Translator applicants must protect all LPFM applications, permits and licenses. To this end, the Commission should take notice that there are presently only 3 LPFM licenses and 3 LPFM Construction Permits in the reserved band, with 68 additional pending LPFM applications (*some of which* are MX'd with one another) below 92 MHz which are entitled to protections from FM Translators. Thus, while the preclusive impact of this number of applications on a

nationwide basis might not be extremely large, it is still much greater than REC is claiming as REC cites only the granted LPFM authorizations.

### **Conclusion**

WHEREFORE, the above premises considered in response to REC's opposition comments, it is respectfully requested that the Commission make certain amendments to Part 74 of the Commission's Rules to permit satellite feeds to Noncommercial Educational FM Translators operating on commercial frequencies.

Respectfully submitted,

**CALVARY CHAPEL OF TWIN FALLS, INC.  
CREATIVE EDUCATIONAL MEDIA CORP., INC.  
POSITIVE ALTERNATIVE RADIO, INC.  
PRIORITY RADIO, INC.**

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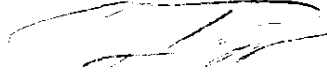
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December 19, 2002

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 19th day of December, 2002, I have served a copy of the foregoing **"REPLY TO OPPOSITION COMMENTS OF REC NETWORKS"** first-class, postage-prepaid, on the following:

Rich Eyre  
REC Networks  
P.O. Box 40816  
Mesa, AZ 85274-0816

A handwritten signature in black ink, appearing to read 'Cary S. Tepper', is written above a horizontal line.

Cary S. Tepper, Esq.